THE BANKING LITIGATION LAW REVIEW

FOURTH EDITION

Editor
Deborah Finkler

THE LAWREVIEWS

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PREFACE

This year's edition of *The Banking Litigation Law Review* demonstrates that litigation involving banks shows little sign of slowing and continues to evolve.

Disputes that have arisen in the past year cover a broad spectrum, from claims by consumers against banks (relating to losses incurred either to the bank or to third parties) to claims by banks for the recovery of loans and the enforcement of guarantees. Cross-border issues frequently arise, with banking litigation continuing to be a key area of focus for international commercial litigation.

One of the major challenges of 2020 has, of course, been covid-19, and this year has demonstrated the resilience and flexibility of court systems around the world, including in the UK, in adapting their procedures in order to minimise disruption to the administration of justice. At the time of writing, the 'new normal' in many jurisdictions now provides for virtual hearings (including remote witness evidence) and electronic trial bundles as a default. This enforced experiment seems likely to have a lasting impact on court procedures around the world. While it is likely that trials involving witness evidence will revert to being largely in person, the need to do so for many procedural applications is less obvious. In any event, it is to be hoped that some of the positive aspects of operating remotely – for example the reduction in the amount of paper used – are here to stay.

A continuing trend is the increase in the use of class or multi-party actions and representative claims. Although often perceived as a predominantly US phenomenon, the past year has seen growth in the use of class actions within non-US jurisdictions, particularly in the UK, Canada and Australia. Whether this rise is the precursor to a worldwide adoption will depend on a number of factors, including any new mechanisms for group actions that are adopted in countries where they did not previously exist and the way courts in different jurisdictions react to such new actions. In the UK, for example, judgment is keenly awaited in a Supreme Court case that is expected to play a key role in clarifying the operation of a new collective proceedings regime and, depending on its outcome, either energise or curtail the growth of competition class actions in the UK. Related to the rise of group actions, one potential area of reform is third party litigation funding (a frequent driver of such actions). Recent regulatory reforms in Australia means that litigation funders are now required to hold a licence and must comply with the same conduct obligations to which banks and other credit providers are subject, including the requirement to provide their licensed 'financial services' efficiently, honestly and fairly. It will be interesting to see whether other jurisdictions follow suit.

The preface to last year's edition highlighted the concern that claimants will seek to use data protection legislation, including the General Data Protection Regulation (GDPR) in the European Union, as a tool in litigation, and noted that this concern is only likely to

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grow. The rise of UK class action cases for damages resulting from data breaches in the past year reinforces the importance of banks managing such risks, both in a regulatory and in a litigation context. Set against the background of increasingly litigious and well-funded claimants, and considering the extensive volume of personal data that banks hold, the need for adequate systems and controls to protect the data of consumers and employees is ever more vital.

At the time of writing, the Brexit transition period is drawing to an end, and nobody is any closer to being able to say what the political or economic impact of Brexit will be. The prospect of the transition period ending with no deal is a real possibility, and it remains to be seen whether the UK can agree a deal with the European Union in the time available. The UK government has declared its intention to sign up to either or both of the 2007 Lugano Convention and 2005 Hague Convention on Choice of Court Agreements, but unless and until that happens there remains a degree of uncertainty over jurisdiction and the enforcement of judgments.

Overall, 2020 has no doubt been a tumultuous year for many. As the year approaches its end, there are some reasons for optimism: global stock markets surged following the results of the US 2020 presidential elections and news of significant strides being made in the development of a covid-19 vaccine. Nevertheless, a substantial amount of political and economic uncertainty remains. Moving forward, the prospect of an unknown future legal landscape in the UK, and to an extent in the remainder of the EU, following Brexit and the continuing effect of covid-19 on the world economy (which may well persist long after the virus itself has been contained) can be expected to generate disputes in the banking sector for a long time to come.

Deborah Finkler
Slaughter and May
London
November 2020

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Chapter 8

JAPAN

Hironobu Tsukamoto and Hiroyuki Ebisawa[1]

I OVERVIEW

No official statistical data on the number and trend of civil litigation cases involving banks and other financial institutions exists in Japan. It is widely believed, however, that the number of lawsuits between investors and financial institutions, one of the main categories from which banking litigation is generated, has decreased compared with the number of the same immediately following the post-global financial crisis era, after the bankruptcy of Lehman Brothers in 2008. This decrease is largely owing to Japan's recent improved economic situation, which benefits many investors, likely obviating their need to seek judicial redress in many instances. Be that as it may, in recent years, some lawsuits involving the banking sector have been heard, on which Japanese courts have handed down seminal decisions. In this chapter we introduce those court decisions and recent legislative developments, specifically reforms of Japan's Civil Code, which are likely to substantially affect future commercial litigation, including banking disputes. We also explain the major causes of and procedural issues related to banking litigation in Japan.

II RECENT LEGISLATIVE DEVELOPMENTS

The Amendment to the Civil Code of Japan was enacted by the National Diet in May 2017 and promulgated in June 2017. Most of the amendments came into effect on 1 April 2020. Since this reform covers a wide variety of civil law issues, it is not feasible to explain it in its entirety in this chapter. Several reforms may substantially affect commercial litigation, including one involving banks. The examples of those reforms are in Section II.

i Reform on prescription

The Civil Code prior to the amendment stipulated 10-year extinctive prescription, where a claim was extinguished if not brought within 10 years of the date on which it became possible to exercise the right to do so, with some exceptions (e.g., where the period of extinctive prescription was shorter than the general rule, such as five years, for a claim arising from a commercial act). The amendment, which abolished the exceptions, introduced a new general rule: a claim is extinguished the earlier of five years after the claimant becomes aware that the right of the claim can be exercised or 10 years after the right of the claim can be

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exercised. In addition, the amendment introduced a new suspension on prescription, where the completion of the prescription period for a right and claim is suspended for a certain period, generally one year, if parties agree in writing to negotiate such right and claim.

ii New restrictions on personal guarantees

The Amendment imposes some restrictions on guarantee agreements entered into by individuals. One of the important restrictions is that a guarantee agreement is not effective if (1) the principal debt of such guarantee agreement is a monetary loan owed by the principal debtor for the debtor's business; or (2) such guarantee agreement is a revolving guarantee in which the scope of the principal debts includes the monetary loan owed by the principal debtor for the debtor's business, unless the individual guarantor expresses his or her intent in a notarised document to perform the guarantee obligations within one month preceding the execution date of the guarantee agreement.[2] Further, if a guarantee agreement falls within the scope of (1) or (2) above, the principal debtor is required to provide certain information, such as the properties and income and expenditures of the principal debtor, to the individual guarantor when the principal debtor asks the individual guarantor to assume the guarantee obligations. A failure to undertake such obligations may cause the guarantee agreement to be subject to cancellation by the guarantor.

iii Change of statutory interest rates

The Civil Code and the Commercial Code prior to the amendment provided a fixed statutory interest rate of 5 per cent and 6 per cent per annum, respectively. The Amendment abolished those fixed statutory interest rates, and introduced a uniform floating interest rate, which is 3 per cent, but may be revised every three years in light of the average market interest rate. Most loan agreements involving banks and other financial institutions have a provision under which interest rates are prescribed; therefore, the change of statutory interest rates generally does not affect the practice in banking sector-related litigation as far as such loan agreements are concerned. However, this statutory interest applies to a tort claim, which is one of the main causes for customers to sue their banks and financial institutions, such as a claim of failure to explain, as described in Section IX. Therefore, this change may affect litigation involving financial institutions to that extent.

III REGULATORY IMPACT

The regulatory scheme regarding financial institutions, including banks, is generally administered by the Financial Service Agency of Japan (FSA). The Banking Act and the Financial Instruments and Exchange Act (FIEA) are the main regulatory sources of law governing the activity of banks and other financial institutions. Further, the Act on Sales, etc. of Financial Instruments (ASFI) restricts sales activities by financial institutions. In addition to these statutes, various cabinet orders and ministerial orders, as well as the FSA's policy guidelines, are in effect in the financial sector. As these are administrative regulations, their violation does not necessarily impose civil liability on the violating financial institutions.

2 This restriction is not applicable if the guarantee agreement is entered into by an individual who is involved in the principal debtor's business (e.g., in the case where the individual is a director of the principal debtor if the debtor is a corporation).

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However, Japanese courts frequently refer to such violation in determining civil liability. Furthermore, some provisions directly invoke civil liability on a violation of those regulations, such as liability for damages of financial institutions that fail to explain prescribed information to their customers.[3]

IV SIGNIFICANT RECENT CASES

i Financial institution's liability regarding damages incurred due to embezzlement using bank account

In its decision dated 2 February 2017,[4] the Tokyo High Court did not find a defendant bank (a *Shinkin* bank) liable for damages incurred by the plaintiff company that had alleged that the defendant failed to properly verify the identity of a bank account holder, thereby facilitating embezzlement by the plaintiff company's employee via a fictitious bank account with the defendant. Pursuant to regulations under the laws and government notice of Japan, banks and financial institutions owe a duty to follow identity verification procedures in relation to bank account holders when opening or withdrawing money from bank accounts. In this case, the plaintiff, which incurred damages due to the embezzlement committed by its employee, alleged (1) that the employee repeatedly transferred the plaintiff's funds without any authorisation to a fictitious bank account opened in the defendant and then withdrew the transferred money from the fictitious bank account for her own purposes; (2) that the defendant failed to conduct the necessary identity verification steps, which enabled the employee in question to open the fictitious bank account and withdraw money from the account; and (3) that the defendant's failure constitutes a tortious act for which the defendant is liable to the plaintiff for the damages it incurred due to the embezzlement. The Tokyo High Court upheld the Tokyo District Court's decision, which also did not find the bank liable in this case, holding that, even if the defendant had failed to follow the necessary identity verification procedures and such failure enabled the employee who committed the embezzlement to open and withdraw funds from that account, the defendant could not have specifically been aware that the fictitious bank account was being used for the embezzlement; therefore, the defendant's failure to follow the identify verification procedures does not constitute a tortious act, and the defendant is not liable for damages incurred by the plaintiff due to the embezzlement. This decision illustrates a clear distinction between a bank's duty under the relevant regulations regarding identity verification of account holders and the bank's civil liability towards those who incur damages due to transfers to and withdrawals from a fictitious bank account.

ii Excessive selling financial products to a customer

In its decision dated 3 March 2017, the Tokyo High Court addressed the issue of a financial institution's excessive selling of financial products to a customer that ultimately resulted in the customer incurring losses.[5] In this case, a plaintiff alleged, among others, (1) that the defendant, a securities company, repeatedly advised and made proposals to the plaintiff to buy financial products notwithstanding that the plaintiff had consistently incurred losses

3 Article 5 ASFI.

4 Tokyo High Court, 2 February 2017, Hei 28 (ne) No. 4305, 1529 KINHAN 27.

5 Tokyo High Court, 25 October 2017, Hei 29 (ne) No. 2554, 1531 KINHAN 54.

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from investing in similar financial products, and (2) that the plaintiff purchased these financial products in reliance on the defendant's advice and proposals, which constituted excessive selling of financial products by the defendant to the plaintiff, significantly deviating from socially acceptable standards. In its decision at first instance, the Tokyo District Court found the defendant liable for the plaintiff's loss, accepting the plaintiff's allegation that the defendant excessively proposed and sold financial products to the plaintiff. The Tokyo High Court upheld the decision of the Tokyo District Court regarding the defendant's liability on excessive selling of financial products to the plaintiff; however, the Tokyo High Court deducted 70 per cent of the damages incurred by the plaintiff, factoring in the plaintiff's negligence through reasoning such as that the plaintiff eventually purchased those financial products of his own accord. This decision gives some insight into Japanese courts' view as to how liability should be apportioned between financial institutions, which sell financial products to their customers improperly, and the customers, who purchase the financial products in reliance on the financial institutions' advice, but nevertheless still decide to enter into such transactions of their own accord.

V COURT PROCEDURE

Japanese civil procedure falls within the category of a civil law system, which is different from court procedures in common law countries, such as the United States and the United Kingdom. Further, one feature of Japanese civil procedure, which is relevant to litigation between customers and banks, is that no equivalent to widely available class action lawsuits in the United States and other countries exists in Japan. Having said that, however, the Act on Special Measures concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (ASMCCP), which came into effect in 2016, changes the class action landscape in Japan: for the first time, in limited circumstances, class action-styled lawsuits may be brought. However, such procedure is to be initiated by a specified consumer organisation qualified by the government, and an individual consumer cannot initiate such procedure.[6] Further, the application of the ASMCCP is limited to certain claims stipulated thereunder,[7] and certain types of damages, such as loss of profits, are excluded from the scope of recoverable loss.[8]

In contrast to the class action-style procedure, the alternative dispute resolution (ADR) procedure for disputes regarding financial products has become one of the main avenues for the resolution of financial disputes since its introduction in 2010 under relevant legislation, such as the FIEA and the Banking Act. Customers who have a complaint regarding financial products or financial institutions may bring such complaint either to normal court or to a designated dispute resolution organisation for ADR procedure, which has been established in each category of the financial business sector, such as banking and life insurance, although there are no such designated dispute resolution organisations in some financial business categories. This ADR procedure conducted by a designated dispute resolution organisation has some special features compared to standard ADR. One of the main features of this ADR is that a financial institution cannot refuse this procedure without just cause for doing so, if the customer wishes to seek the resolution through the ADR, rather than through court

6 Article 3, Paragraph 1 ASMCCP.
7 id.
8 Article 3, Paragraph 2 ASMCCP.

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procedure.[9] Further, in ADR proceedings, a designated dispute resolution organisation may request a financial institution to make a report or to submit books and documents or any other articles, which the financial institution cannot reject without just cause.[10] In addition, unlike normal ADRs where the parties may reject a conciliation proposal by an ADR institution, the financial institution is required to accept such proposal except in certain stipulated situations, such as where it chooses to file a lawsuit on the dispute.[11]

VI INTERIM MEASURES

Under the laws of Japan, three types of interim measures concerning civil procedure exist: provisional seizure of assets, provisional disposition of a disputed subject matter, and provisional disposition that determines a provisional status.[12] Regarding litigation involving banks, provisional seizure of assets is often used, whereby a debtor's or guarantor's assets are temporarily seized to enforce a judgment granting a monetary claim over the assets after the court delivers its formal judgment.

VII PRIVILEGE AND PROFESSIONAL SECRECY

i Privilege and professional secrecy

While no concept exactly equivalent to attorney–client privilege exists, a similar type of protection over attorney–client communications is available under Japanese civil procedure.

Lawyers bear confidentiality obligations for information obtained from clients under professional ethics, and a breach of such obligations could subject the breaching lawyer to criminal sanctions.[13] In connection with such confidentiality obligations, the facts that become known to a lawyer during the course of his or her professional engagement and that should be kept secret, are protected. Specifically, the rights of refusal (1) to give testimony on confidential information of clients[14] and (2) to produce documents containing confidential information of clients[15] are provided under the Code of Civil Procedure. Further, documents prepared exclusively for the internal use of document holders are protected from document production orders issued by courts.[16]

ii Disclosure

In connection to privilege and professional secrecy, no 'discovery' or other document or information-exchange process in the course of litigation exists in Japan. Instead, the Code of Civil Procedure provides for courts to make orders regarding document production; however, such orders are only available where a party succeeds in presenting the existence and identity

9 For example, Article 156-44, Paragraph 2, Item 2 FIEA.
10 For example, Article 156-44, Paragraph 2, Item 3 FIEA.
11 For example, Article 156-44, Paragraph 6 FIEA.
12 Article 20, Paragraph 1; Article 23, Paragraphs 1 and 2 Civil Provisional Remedies Act.
13 Article 134, Paragraph 1 Criminal Code.
14 Article 197, Paragraph 1, Item 2 Code of Civil Procedure.
15 Article 220, Item 4(c) Code of Civil Procedure.
16 Article 220, Item 4(d) Code of Civil Procedure.

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of a document[17] and where the necessity to produce the same as evidence exists.[18] Further, several statutory exceptions exist under which the other party does not bear the obligation of document production.[19] Given the general tendency that courts are prudent in granting orders on motions for document production, no substantial disclosure of documents between parties in civil litigation usually occurs.

VIII JURISDICTION AND CONFLICTS OF LAW

Jurisdiction and conflicts of law issues are not usually disputed in banking litigation in Japanese courts. It should be noted, however, that consumers residing in Japan are generally allowed to file a complaint with Japanese courts against banks and other financial institutions concerning disputes arising from agreements between them, even if such agreements provide for the exclusive jurisdiction of a foreign court.[20]

IX SOURCES OF LITIGATION

There are various types of civil litigation involving banks and other financial institutions. Most such litigation is brought by customers of banks and other financial institutions, such as investors purchasing financial products from banks and the like, and customers who deposit money in their bank accounts. Another major source of banking litigation is for banks and other financial institutions to seek repayment of money against debtors or guarantors under a loan agreement or guarantee agreement, as well as those who seek enforcement of a mortgage right over assets of debtors, etc.

i Lawsuits between investors and financial institutions

One of the major types of litigation between financial institutions, including banks, and customers is those where investors sue the institutions for selling financial products that ultimately result in the investors incurring losses. In those lawsuits, in their complaints, investors seek refunds to the extent of their losses, and their typical arguments include the following:

a failure to explain the contents and risks of financial products;
b failure to evaluate the suitability of financial products to investors; and
c the purchase of financial products by fraudulent means by financial institutions or by mistake by investors.

These arguments often overlap, and are concurrently presented to the court. Each argument's effect differs from the other, as explained in the following subsections.

17 Article 221, Paragraph 1 Code of Civil Procedure.
18 Article 181, Paragraph 1 Code of Civil Procedure.
19 Article 220, Item 4 Code of Civil Procedure.
20 Article 3-4, Paragraph 1; Article 3-7, Paragraph 5 Code of Civil Procedure.

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Failure to explain the contents and risks of financial products

The ASFI requires financial institutions to explain to its customers certain important information about the financial products stipulated thereunder at or before the time of sale of the financial products to the customer.[21] If financial institutions fail to perform such duty of explanation, they will be held liable for the damages suffered by the said customer as a result thereof.[22]

In addition to the ASFI, the Supreme Court has held that, if a contractual party fails to disclose to the other party information that could affect the decision of whether to enter into the agreement, the other party may claim against that party damages incurred from entering into the agreement as a general tort claim.[23] On the basis of this court precedent, investors often assert that financial institutions fail to disclose necessary information to them when selling financial products, which constitutes a tortious act, and that the financial institutions are responsible for the damages that they incurred.

The fulfilment of this duty to provide an explanation is generally considered from two different aspects: the scope of explanation and the manner and extent of explanation. Under the scope of explanation, the court essentially requires the financial institutions to explain the basic structure of the financial products in issue and the risk thereof,[24] which are essential for investors to make well-informed decisions on the investment of the financial products at their own risk. Concerning the manner and extent of the explanation, the courts consider those factors by referring to, among others, the nature of the financial products and knowledge and experience that the specific investors involved had when the transaction was concluded.[25]

Failure to evaluate suitability of financial products to investors

A financial institution is required to evaluate a customer's suitability to a financial product in issue, in light of customer knowledge, customer experience and the state of customer assets or the purpose of the transaction in issue, pursuant to the FIEA.[26] This requirement is called the 'principle of suitability', and the Supreme Court addressed the relationship between this principle of suitability and the liability of the financial institution violating this principle, holding that a material violation of the principle of the suitability, such as where a sales person of a financial institution offered to sell financial products that included excessive risks to such customers, may constitute a tortious act and cause the financial institutions to owe civil liability to the investor.[27] This court decision is particularly important in that it affirmed the imposition of civil liability on the financial institutions, even though the principle of suitability is originally considered as a regulatory rule and not a direct cause of civil liability being imputed to financial institutions.

21 Article 3, Paragraph 1 ASFI.
22 Article 5 ASFI.
23 Supreme Court, 22 April 2011, Hei 20 (jyu) No. 1940, 65-3 MINSHŪ 1405.
24 See, e.g., Supreme Court, 7 March 2013, Hei 23 (jyu) No. 1493, 243 SAISHŪ MINJI 51; Supreme Court, 15 March 2016, Hei 26 (jyu) No. 2454, 1648 SAIJI 1.
25 See, e.g., Tokyo High Court, 19 October 2011, Hei 23 (ne) No. 3584, 1942 KINHŌ 114.
26 Article 40, Item 1 FIEA.
27 Supreme Court, 14 July 2005, Hei 15 (jyu) No. 1284, 59-6 MINSHŪ 1323.

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Fraud or mistake by investors

An investor sometimes argues that the contract of purchasing the financial products is void or can be cancelled owing to fraud by a financial institution or an investor's mistake regarding the structure and risks of the financial products. However, courts tend to accept such arguments in only limited circumstances, where, for example, a customer did not understand an essential part of the structure and risk of the financial product in issue owing to failure of the financial institution to perform its duty of explanation.[28]

ii Lawsuits between a non-investor customer and bank

In addition to lawsuits between investors and banks, lawsuits between non-investor customers and banks occasionally arise. In a typical case, customers with bank deposit accounts sue banks for non-performance of their duty under deposit agreements. For example, customers assert that banks reject their requests to withdraw money from their bank accounts without just cause. A typical reason for a bank to do so is that there is a dispute as to who has the legal right to withdraw money from the account. Another example of this kind of dispute is where customers allege that banks have negligently allowed a payment of money to be made from their bank account to unauthorised persons, and therefore, the banks remain responsible for paying such money to the customers.

In a recent, interesting court case regarding a dispute between a non-investor customer and a bank, a customer filed a lawsuit against a bank for the transfer of money to an incorrect bank account, asserting that such incorrect transfer of the money caused the customer to incur a loss.[29] The Tokyo High Court held that such incorrect transfer constituted a failure of performance under a money transfer agreement between the bank and the customer and that the bank was responsible for the loss incurred by the customer. A unique feature of this court case is that the court determined the amount of damages awarded by referring to Article 248 of the Code of Civil Procedure, which provides that, if damage is found to have occurred, but, owing to the nature of the damage, it is extremely difficult to prove the amount thereof, the court may reach a finding on an amount of damages that is reasonable, based on the entire import of oral arguments and the results of the examination of evidence.

iii Lawsuits between a debtor or guarantor and bank

Another typical litigation source involving financial institutions, especially banks, is litigation related to banks' collection of repayments against a debtor and guarantor under a loan agreement or guarantee agreement. Those lawsuits are usually simple because, in many cases, banks clearly have the right to demand repayment against a debtor and guarantor under the relevant agreement. However, under some circumstances, guarantors assert that they misunderstood or were unaware of material facts related to the debtor and loan agreement in issue and that the guarantee agreement is void owing to such mistake. Under limited circumstances, the courts accept such assertion by the grantor and deny the bank's claim.

Further, this type of lawsuit often concurrently occurs with bankruptcy proceedings concerning the debtor. In those cases, the debtor had typically taken out a mortgage to

28 Osaka High Court, 12 October 2010, Hei 22 (ne) No. 1476, 1914 KINHŌ 68.

29 Tokyo High Court, 14 September 2016, Hei 28 (ne) No. 938, 2323 HANJI 101.

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borrow money from the bank or has a deposit account in the bank with which it has entered into a loan agreement. Therefore, disputes frequently occur as to whether the banks' right on the mortgage and bank account has priority over the bankruptcy proceedings.

X EXCLUSION OF LIABILITY

The Consumer Contract Act provides, among others, that clauses are void if they completely exempt a business operator from either liability to compensate a consumer for damages arising from default by the business operator or liability for damages to a consumer that arises from a tort committed during the business operator's performance of a consumer contract.[30] Therefore, concerning an agreement between a financial institution and an individual, such clauses are void as long as the individual can be classed a consumer and the agreement constitutes a consumer contract stipulated under the Consumer Contract Act.

Regarding lawsuits between an investor and a bank, if the investor's assertion regarding the damage claimed is established, the investor may seek compensation of damages incurred as long as a proximate causation exists between the bank's conduct and the loss incurred by the investor. Concerning a bank's failure to sufficiently explain information to the investor, one of the main causes of this kind of lawsuit, courts frequently deduct the damages awarded, factoring in the investor's negligence. In some cases, the courts, in fact, deducted more than half the amount of the loss from the awarded damages.

XI OUTLOOK AND CONCLUSIONS

As explored in this chapter, the range of civil litigation involving banks and other financial institutions is extensive, and it is a monumental task to thoroughly explain these disputes uniformly. Nevertheless, one highlight of litigation trends involving financial institutions is disputes between customers, including investors, and financial institutions, where customers claim damages for losses incurred owing to certain activity or products provided by the financial institutions. As approximately 10 years have elapsed since the global financial crisis in 2008, many court decisions addressing alleged losses claimed by investors have been delivered during that period. As a result, with Japan enjoying economic stability in recent years, at present, the incidence of court cases involving financial institutions has stabilised. However, as economic conditions are rarely static and could rapidly change, especially in view of the prevailing situation due to covid-19, careful attention should be given to judicial trends on banking litigation to better prepare for the next new or emerging trend in this field in the coming years.

30 Article 8, Paragraph 1, Items 1 and 3 Consumer Contract Act.

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Appendix 1

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Hironobu Tsukamoto is a partner at Nagashima Ohno & Tsunematsu's New York office. He specialises in litigation and arbitration of a broad range of commercial disputes, employment disputes and intellectual property disputes. Mr Tsukamoto counsels and represents both domestic and foreign clients. In 2015, Mr Tsukamoto moved to Nagashima Ohno & Tsunematsu's New York office and has been assisting our international clients from New York ever since.

He graduated with an LLB from Kyoto University in 1998 and with an LLM from the University of Chicago in 2005. He was admitted to practise law in Japan in 2000, and in New York in 2006.

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Hiroyuki Ebisawa is a partner of Nagashima Ohno & Tsunematsu. His main practice area is dispute resolution, focusing on complex commercial litigation and cross-border litigation over a wide range of issues, including corporate and financial matters, product liability and intellectual property matters, construction and real estate matters and employment law matters. He has represented a variety of Japanese and foreign clients in various industries in litigation as well as arbitration and other dispute resolution procedures. His experience includes successful representations of financial institutions in high-stake, complex lawsuits in Japanese courts.

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